TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~260~~ 303

HENRY S. MARTIN, PLAINTIFF IN ERROR,

vs.

ROBERT BEVERLY AND EDGAR SNOWDEN.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE COMMONWEALTH OF VIRGINIA.

January Term '74

FILED FEBRUARY 11, 1868.

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To the Hon. R. C. L. Moncure, judge of the Supreme Court of Appeals of the State of Virginia:

The petition of Henry S. Martin respectfully represents that he is aggrieved by a final judgment of the District Court of Appeals for the fourth district of Virginia, rendered at the July term thereof, of the year 1867, held at Fredericksburg, in an action wherein your petitioner was appellant and Robert Beverly and Edgar Snowden were appellees. A transcript of the record is herewith presented, by which it appears that the subject matter in controversy exceeds one thousand dollars in value, and that the said District Court of Appeals, at the time at which the case was decided, entered of record that it involves questions of such novelty and difficulty as to make it proper that it should be finally determined in the Court of Appeals.

Your petitioner assigns as errors—

First. That the judgment is not warranted by the facts found by the special verdict.

Second. The errors complained of in the petition for supersedeas from the District Court of Appeals to the Circuit Court wherein the cause was first tried.

For the said errors your petitioner prays a writ of supersedeas to the judgment aforesaid.

HENRY T. MARTIN.
By W. WILLOUGHBY, *Att'y.*

Supersedeas awarded. Bond with surety to be given in the penalty of two hundred dollars, conditioned as the law directs.

R. C. L. MONCURE.

July 19th, 1867.

To the clerk of the Supreme Court of Appeals, Richmond.

VIRGINIA:

Pleas at the court-house, in the town of Fredericksburg, before the District Court for the fourth judicial district, on Friday, the 12th day of July, 1867.

Be it remembered, that heretofore, to wit, on the 4th day of April, 1867, was sued out of the said District Court a writ of supersedeas, which, together with the return thereon, is in these words:

The Commonwealth to the sheriff of Alexandria county, greeting:

We command you that from all further proceedings on a judgment of the Circuit Court of Alexandria county, rendered at a special term of the said court, on the 25th day of February, 1867, in an action of unlawful detainer depending in the said court between Edward Snowden and Robert Beverly, plaintiffs, and Henry S. Martin, defendant, you altogether supersede; which judgment before the judges of our District Court of the fourth judicial

district, at the court-house, in the town of Fredericksburg, for cause of error in the same to be corrected on the petition of the said Henry S. Martin, we have caused to come. We also command you that you give notice to the said Edward Snowden and Robert Beverly that they be before the judges of our said District Court at the court-house aforesaid, on the first day of July court next, then and there to have a rehearing of the whole matter in the judgment aforesaid contained. And have then there this writ.

Witness John James Chew, clerk of our said District Court,
6 at Fredericksburg, the fourth day of April, 1867, and in the 91st year of the Commonwealth.

J. J. CHEW, *Cl'k.*

Memo: The above writ of supersedeas is not to be effectual until the petitioner shall enter into bond with sufficient security in the clerk's office of the said Circuit Court of Alexandria county, in the penalty of two hundred dollars, conditioned as the law directs, and a certificate of the execution thereof, together with the names of the security shall be endorsed hereon by the clerk of the said court.

Teste: J. J. CHEW, *C.*

CLERK'S OFFICE, CIRCUIT COURT OF ALEXANDRIA COUNTY,
April 13*th*, 1867.

H. S. Martin, the within-named petitioner, has this day filed in this office a supersedeas bond, with Josiah Millard as security,
7 in the penalty of two hundred dollars, conditioned as the law directs.

Teste: JEFF. TACEY, *Clerk.*

Return endorsed on writ.

"Service acknowledged, S. Ferguson Beach, att'y for defen'ts. April 10th, 1867."

The following is a copy of the petition for the supersedeas order, in vacation, of a judge of this court awarding the same, and of the record of the Circuit Court of Alexandria county.

8 District Court of Appeals of Virginia, District IV.

MARTIN
vs.
SNOWDEN.

To the Honorable R. C. L. Moncure, judge of the District Court of Appeals for the fourth district of Virginia:

The petition of Henry T. Martin respectfully represents, that he is aggrieved by a final judgment of the Circuit Court of the ninth judicial circuit, sitting in Alexandria county, rendered at the special term thereof, held in February, 1867, in an action wherein Robert

Beverly and Edgar Snowden were plaintiffs, and your petitioner was defendant. A transcript of the record is herewith presented.

Your petitioner assigns the following errors in the said judgment:

1st. The court erred in denying the motion to remove the cause to the United States Circuit Court. The defendant justifies the detention alleged to be wrongful by the plaintiff under color of an act of Congress. The act of Congress of March 3rd, 1863, known as the act in relation to the writ of habeas corpus, section 5, &c.; the amendments thereto provide, that in any suit or prosecution, civil or criminal, commenced in any State court against any person for any trespass or wrong done or omitted to be done during the rebellion, under color of any authority derived from any act of Congress, such removal shall be made upon motion properly made.

2nd. The judgment of the court is not warranted by the facts found by the special verdict. The defendant claims a right to the possession of the property through a lease from L. E. Chittenden, who purchased the premises from the United States, at a sale by the United States tax commissioners, under the act of Congress of 1862, and amendments thereto, in relation to the collection of taxes in insurrectionary districts, as shown by the certificate of sale mentioned in the special verdict.

By that act this certificate of sale is prima facie evidence of the regularity and validity of the sale and of the title of defendant,
9 and is conclusive evidence of such regularity and validity, except as to three particulars, to wit: as to whether the property was subject to taxes, or that the taxes had been paid previous to sale, or that the property had been redeemed according to the provisions of the act.

It is not pretended that the property was not subject to taxes.

It is claimed by the plaintiff that the tender of the taxes to the commissioners before the day of sale by a friend of the owner of said land was sufficient to have prevented such sale, and that such sale was irregular on that account, but the law directs that such sale shall be made unless the tender of payment is made by the owner in person. No other person can make such payment before the sale.

The plaintiffs claim that the terms of redemption have been sufficiently complied with.

To this the defendant says:

First. That the person making such tender was not the owner of the land, and was not the proper person to make application for redemption.

Second. The application was not made by the guardian, trustee, or other person having charge of the estate.

Third. Such applicant declined to take the oath prescribed by the act of March 3d, 1865, which provides that no person can redeem property sold at such tax sales, without taking the oath therein prescribed, nor have the plaintiffs in this action taken such oath.

It is claimed by the plaintiff that the tax commissioners had no authority to sell only a sufficient amount to pay the taxes, penalty, and costs.

In answer to this the defendant says:

First. That the plaintiff is concluded from making any enquiry upon the subject—this not being one of the reasons for which the certificate of sale can be impeached as evidence of the validity of the sale.

Second. That if such enquiry could be made, the law prescribes that the property subject to taxation becomes forfeited to the United States in non-payment of taxes, and shall be sold. It provides, that if it does not bring two thirds of its assessed value, the commissioners may bid it in for the use of the government. It also provides what shall be done with the money arising from such sales, over and above what is sufficient to pay the taxes, penalty, and costs. The commissioners therefore did not exceed their authority in selling the whole of the land which had been previously forfeited to the United States.

For the said errors your petitioner prays a writ of supersedeas to the judgment aforesaid.

HENRY S. MARTIN.
W. WILLOUGHBY, *Att'y.*

I, Westie Willoughby, an attorney practising in the District Court of Appeals for the fourth district of Virginia, do certify that, in my opinion, there is sufficient matter for reversing the judgment complained of in the foregoing petition.

W. WILLOUGHBY.

Supersedeas awarded. Bond with surety to be given in the penalty of two hundred dollars, conditioned as the law directs.

April 3, 1867.

R. C. L. MONCURE.

To the clerk of the District Court held at Fredericksburg.

VIRGINIA:

Pleas at the court-house in the county of Alexandria, before the judge of the Circuit Court for said county, on Monday, the 25th day of February, 1867.

Be it remembered, that heretofore, to wit, on the 26th day of October, in the year 1866, came Edward Snowden and Robert Beverly, by their attorney, and sued out of the clerk's office of the said Circuit Court, a summons against Henry S. Martin, which summons, with the return thereon, is in the words and figures following:

The Commonwealth of Virginia, to the sheriff of Alexandria county, greeting:

We command you to summon Henry S. Martin to appear before our Circuit Court of Alexandria county, at the court-house of said county, on the 12th day of November, 1866, that day being the first day of the November term, 1866, of said court, to answer Edward Snowden and Robert Beverly, of a plea that he is in possession of, and

unlawfully withholds from them, tenements and lots of ground on north side of Prince street, between Columbus and Alfred streets, in the county of Alexandria, Virginia. 1. Beginning 86 feet east of Alfred, and running thence eastwardly on Prince 93 feet, more or less, to a point 68 feet west of Columbus ; thence northerly, and parallel to Columbus street, 89 feet to an alley ; thence west on said alley, parallel to Prince street, the length of the first line; thence southerly, and parallel to Columbus street, to the beginning. 2. Beginning at a point where the north line of the alley above-mentioned intersects the west line of another alley, which point is 113 feet east of Alfred street, and running thence west parallel to Prince street, and binding on the first mentioned alley 40 feet ; then northerly par-
11 allel to Alfred street, 22 feet ; thence east, parallel to Prince street, 40 feet to another alley; thence south, on said alley, to the beginning. And have then there this writ.

Witness Jefferson Tracey, clerk of our said court, at the court-house aforesaid, this 26th day of October, 1866, and in the 91st year of the Commonwealth.

JEFFERSON TRACEY.

[Rev. stamp, 50 cents.]

Return.

Executed by serving a copy upon H. S. Martin, Oct. 30, 1866.
S. N. GARWOOD, *Sheriff.*

And at another day, to wit, at a Circuit Court held for said county of Alexandria, on the 12th day of November, 1866, came the plaintiffs, by their attorney, and on their motion this case is docketed.

And at another day, to wit, at a Circuit Court continued and held for said county of Alexandria, on the 23d day of November, 1866, came the parties, by their attorneys, and the defendant, by his petition in writing this day filed, moved the court to remove this cause for trial to the Circuit Court of the United States for the State of Virginia; which motion being argued, the same was overruled. To which ruling of the court the defendant excepted, and tendered his bill of exceptions; which was received, signed, sealed and enrolled, and ordered to be made a part of the record in this cause, and is in the words and figures following :

Circuit Court.

BEVERLY & SNOWDEN,
vs.
HENRY S. MARTIN.

Be it remembered, that at the time of entering his appearance in said action, the defendant filed a petition for the removal of the cause for trial at the next Circuit Court of the United States in the district where said suit was pending, of which the following is a copy, to wit:

EDWARD SNOWDEN & ROBERT BEVERLY
vs.
HENRY S. MARTIN.

To the Circuit Court of Alexandria County, Virginia :

12 Your petitioner, the defendant in the above-entitled action, now pending in the Circuit Court of the county of Alexandria, respectfully represents : That the said plaintiffs, who are and have been for the last five years, residents and citizens of Virginia, on or about the 1st day of May, in the year 1861, abandoned the possession of the said premises, for the possession of which this action is brought, and which are of the value of more than $500, and fled into that part of the State of Virginia which was then under the practical control of one Jefferson Davis and his associates, who then, and for more than three years thereafter, continued in rebellion against the government of the United States, and maintaining such rebellion by force and arms ; and that the said plaintiffs, and such of their servants and agents as fled with them, actually participated in maintaining such rebellion, and so continued until the first day of April, 1865.

And your petitioner further shows, that afterwards, to wit, on or about the 1st day of June, 1861, that part of the State of Virginia in which said farm is situated, was, by proclamation of the President of the United States, and by various acts of Congress, legally declared to be in rebellion and insurrection against the authority of the United States, and one of the insurrectionary districts of the United States, and so continued to be until long after the acquisition and perfection of the title to said premises, in one L. E. Chittenden, as hereinafter mentioned.

Your petitioner further states, that afterwards, to wit, on or about the 7th day of August, 1862, the Congress of the United States duly passed an act entitled "An act for the collection of taxes in the insurrectionary districts, and for other purposes," and that said act became and was in force as a law on and after the said 7th day of August, 1862, and with the various legal amendments and additions thereof, has continued in force to the present time, and still is in full force and effect.

Your petitioner further states, that pursuant to the provisions of said act, and for the purpose of collecting the taxes legally due the United States within such insurrectionary districts, the proper legal authority of the United States duly appointed John Hawxhurst, Gillet F. Watson, and W. J. Boreman to be commissioners under said act for the collection of such taxes within the State of Virginia. And the said commissioners having first duly qualified according to the terms of said act, entered upon the performance of their duties as such commissioners, and duly continued in the performance of such duties until after the acquisition of the title, as hereinafter stated.

Your petitioner further states, that under and by various acts of Congress and by law, on and before the first day of Nov., 1864, there became due, in [in] respect of the said premises, to the United States

certain sums of money for direct taxes, which had been before that time duly and legally assessed thereon, and with the payment whereof the said premises had become charged in law, and that the lien,
13 therefore, was legally created upon said premises, whereby the said premises had become charged and bound with the payment of said taxes, which lien was paramount and superior to any other lien or claim upon said premises, and which could not be discharged, except by the payment of said taxes.

Your petitioner further states that all acts necessary in order to charge said farm with the payment of said taxees to the commissioners were performed, and all due steps were taken, and notices given, and acts performed, necessary to forfeit the said premises and the title thereto to the United States, if said taxes were not paid, to wit, on or before the 1st day of December, 1863; that neither the owner of said farm nor any one else has ever paid the said taxes, or any part thereof, to the United States, nor any one in their behalf, and that so far as they are concerned the lien created thereby has never been discharged; and that, in consequence of such non-payment, the said premises, before the sale hereinafter mentioned, became legally forfeited to the United States, and the title of the said plaintiffs, if they ever had any, and all other persons, was fully exterminated by such forfeiture; that said premises having become so forfeited, the said commissioners duly advertised the said farm for sale at public auction to the highest bidder, on the 11th day of January, 1864. Having done all acts necessary to be done to make such sale legal, under and by virtue of said act, at a certain place in the city and county of Alexandria, and that then and there the said commissioners, in due form and process of law, the said taxes having been unpaid, exposed the said premises for sale at public sale to the highest bidder therefor, and that the said L. E. Chittenden bid therefor the sum of $5,000, which was the highest bid therefor, and said premises were then and there, by said commissioners, duly struck and sold to the said L. E. Chittenden as the highest bidder and legal purchaser thereof; that on the same day of said sale, said L. E. Chittenden paid over to the said tax commissioners the said sum of $5,000 in full satisfaction of his bid aforesaid, and thereon the said commissioners, on the same day in due form of law, and according to the statute in such case made and provided, made, signed, and executed and delivered to said L. E. Chittenden a certificate of the purchase of said farm, giving a description thereof, and certifying that the same was sold and struck off to him, he being the highest bidder therefor, for the sum of $5,000, and acknowledging the payment in full for the same, all according to the statute and in due form of law; and afterwards, to wit, on the same day said commissioners paid said money into the treasury of the United States, where it still remains; and said L. E. Chittenden, on his part, did all that was necessary to become the owner of said premises, and has since continued to be the legal and equitable owner of said premises; that on or about the 15 day of January, 1864, said Chittenden, under and by virtue of the power and authority given him by said certificate of purchase, and by virtue of said act of Con-

gress, entered into the possession of said premises, and con-
14 tinued in the exclusive possession of said premises, and as being so in possession as such owner, rented the same to your petitioner, and he is now in the possession of said premises, and in the actual possession thereof as the tenant of said L. E. Chittenden by virtue of said lease.

Your petitioner further shows, that the facts above stated constitute his defense to the action above stated; that all the questions therein necessarily arise under statutes of the United States; that said L. E. Chittenden is a citizen of the State of Vermont; that he entered into the possession of said premises under color of authority of an act of Congress, and so holds possession thereof, as hereinbefore stated, and he therefore respectfully petitions that the said cause may be removed to the Circuit Court of the United States in and for the district of the State of Virginia, in accordance with the statute in such case made and provided, and that such other relief may be granted as may be just and equitable. And your petitioner will ever pray, &c.

H. S. MARTIN.

STATE OF VIRGINIA, *County of Alexandria, ss:*

On this 21st day of November, in the year 1866, personally came before me, T. A. Stoutenburgh, a notary public in the said county, Henry S. Martin, who signed the above petition, and made oath that the facts set forth therein are true, to his knowledge, except as to the matters stated upon information and belief, and as to those matrrs he believe them to be true.

H. S. MARTIN.

Subscribed and sworn to before me Sep'r 21, 1866.
Witness my hand and official seal.
[SEAL.] T. A. STOUTENBURG,
Notary Public.

[Rev. stamp, 5-cts.]

At the same time he filed an affidavit, of which the following is a copy:

CIRCUIT COURT, *Alexandria County*:

Edward Snowden and Robert Beverly *vs.* Henry S. Martin.

I, Lucius E. Chittenden, a citizen of the State of Vermont, temorarily residing in Tarrytown, in the State of New York, being duly sworn, depose and say, that I am the owner, as I suppose, of the tenements and lots of ground on north side of Prince street, in the city of Alexandria, for the possession of which this action is
15 brought, and which is claimed as the property of the plaintiffs herein; that my title to said premises was acquired by purchase of the same at public auction, at a sale held in the city of Alexandria by John Hawxhurst, Gillet F. Watson, and W. J. Boreman,

commissioners appointed and acting under a law of the Congress of the United States, approved June 7, 1862. entitled " an act for the collection of direct taxes in insurrectionary districts in the United States, and for other purposes," and the various amendments thereof; that, under the provisions of said act and other acts of Congress, there became due and payable, in respect of the said land, to the United States the sum of twenty dollars or more in taxes, and the same being unpaid, the said land was by said commissioners, they having conformed to all the provisions of law in relation thereto, duly advertised, exposed for sale and sold to, and purchased by this affiant at public auction for the sum of, as this affiant now recollects, , which sum of this affiant duly paid to said commissioners in full satisfaction of said purchase; whereupon the said commisioners executed and delivered to this affiant a certificate in due form of law, setting forth the sale by the said commissioners of the said premises, and the purchase thereof and due payment therefor by this affiant, which sale and purchase took place, and said certificate dated as this affiant believes on or about the 11 day of January, A. D. 1864.

And this affiant further states, that immediately after said purchase, and on or about the first day of February, 1864, this affiant entered into the complete and full possession of the said premises, and through his agents and tenants has ever since remained and now is in full and complete possession thereof, and that he has not been in anywise disturbed in his said possession until the commencement of this action.

And this affiant further states, that the said Henry S. Martin is now in the actual possession of the said premises as the tenant only of this affiant at a stipulated rent; that he does not in any manner claim title thereto otherwise than from and through this affiant, who is legally bound to defend him in his said possession, and is the party really and primarily interested in the defence of this action.

And this affiant further states that he claims title to said premises under and by virtue of the provisions of certain acts of Congress of the United States, and in virtue of his possession under said acts acquired thereby only, and not under any acts or laws of the State of Virginia, and that any and all acts done, performed, or omitted in relation to said premises, or any supposed wrongs or trespasses performed, done, or committed, either by this affiant or the said Martin, have been bone and committed by virtue and under color of the authority of acts of Congress of the United States, and the legal officers thereof, acting under the authority derived or exercised by said acts of Congress or the President of the United States.

16 And this affiant further states the natnre of the claim of this affiant and the relations between him and the said plaintiffs are, and ever since they returned from beyond the lines of the United States army, have been well known to the plaintiffs and also to his attorney of record, and that this affiant is not and never has been a citizen of the State of Virginia, but now is, and for twenty years last past has been a citizen of the State of Vermont, and that

the plaintiffs are citizens of the State of Virginia, as this affiant is informed and believes.

L. E. CHITTENDEN.

CITY AND COUNTY OF WASHINGTON, D. C.:

On this, 9 day of Nov., 1866, personally appeared before me Lucius E. Chittenden, the signer of the foregoing affidavit, and made oath that the same is true according to his best knowlege, information, and belief.

[SEAL.] JOHN F. CALLAN,
Notary Public.

The def't, also, at the same time, tendered good and sufficient surety, as required by sec. 19 of the judiciary act passed Sep. 24, 1789, and made a statement to the court that he claimed and should rely upon a title to the land upon the certificate mentioned in said petition, and produced an exemplification of said certificate, and moved that the adverse party inform him whether he claimed a right or title to the land under the grant from the State in which said suit is; and thereupon, and on the grounds mentioned in said petition, and affidavit, and statement, moved the said court to remove the said cause to the said Circuit Court, which motion was denied, and the def't excepted to the decision upon said motion, and asked that this bill of exception be signed, seal, and made a part of the record of the cause; which was accordingly done.

[SEAL.] H. W. THOMAS.

And at another day, to wit, at a Circuit Court continued and held for said county of Alexandria, on the 1st day of December, 1866:

This day came the parties by their attorneys, and the defendant pleaded not guilty, and thereof put himself upon the country, and the plaintiffs do the like, and thereupon came a jury, to wit: W. J. Cross, W. W. Goodrich, Richard Lyles, John H. Soper, John S. Emerson, P. G. Henderson, Joseph McLean, James W. Atkinson, W. C. Richards, James T. Beach, J. B. Hancock and John Veitch.

17 who being elected, tried and sworn to try whether the defendant is in possession of and unlawfully withholds from the plaintiffs the premises in controversy, upon their oath returned a verdict in these words:

We of the jury find the following facts in this case: That on the 4th day of September, 1856, William H. Fowle was seized in fee of the premises in controversy, and conveyed them to the plaintiffs by the deed in the words and figures following, to wit:

This deed, made the fourth day of Sept'r, in the year eighteen hundred and fifty-six, between William H. Fowle, of the city of Alexandria, in the State of Virginia, of the first part, and Edward Snowden and Robert Beverly, of the second part, witnesseth, that the

said party of the first part doth grant unto the parties of the second part the following property, viz: A certain lot of ground, with the appurtenances thereto belonging, lying and being upon the north side of Prince street, between Columbus and Alfred streets, in the city of Alexandria, Virginia, and bounded as follows, to wit: Beginning eighty-six feet east of Alfred street, and running thence easterly on Prince street ninety-three (93) feet, more or less, to a point sixty-eight feet (68) west of Columbus street; thence northerly, and parallel to Columbus street, eighty-nine (89) feet to an alley; thence west on said alley, parallel to Prince street, the length of the first line; thence southerly, and parallel to Columbus street, to the beginning; being the lot of ground on which the said William H. Fowle now resides, and is made up of three lots, two of which were conveyed to him by William Bayne and wife, by deed of the 16th day of April, 1855, recorded in liber Q. No. 3, page 488 of the land records of Alexandria county; and the other conveyed to the said William H. Fowle, by Charlotte Jacobs and Lawrence P. Taylor, by deed of the 12th day of May, 1855, recorded in liber Q, No. 3, page 489 of the land records of Alexandria county. Also, another lot of ground upon the north side of the alley in the rear of the lot above-mentioned, and bounded as follows, viz: Beginning at a point where the north line of the above-mentioned intersects the west line of another alley, which point is one hundred and thirteen feet east of Alfred street, by a line parallel to Prince street, and one hundred feet seven inches north of Prince street, by a line parallel to Alfred street, and running thence west, parallel to Prince street, and binding on the first mentioned alley forty feet; then northerly, parallel to Alfred street, twenty-two feet; thence east, parallel to Prince street, forty feet to another alley; thence south on said alley to the beginning. Which lot of ground was conveyed to the said William H. Fowle by William Bayne and wife, by the deed hereinbefore mentioned.

And the said William H. Fowle doth further grant and convey unto the parties of the second part all the household and kitchen furniture, plate, mirrors, ornaments, and every other article now used by the said William H. Fowle in housekeeping, and contained in the dwelling-house occupied by him upon the lot of ground first herein mentioned, the principal articles whereof are enumerated in the schedule annexed to this deed, marked A, and made a part of this deed; to hold the property hereby granted, upon trust, for the following uses and purposes, and none other; that is to say, upon trust for the sale and separate usé and benefit of Eliza T. Fowle, wife of the said William H. Fowle, for and during her natural life, free from, and independent of the debts, claims, control or interference of her present, or any future husband; with power to the said Eliza T. Fowle, at any time hereafter, by any instrument in writing, under her hand and seal, to limit or appoint the remainder in the said property to the use of the said William H. Fowle, or any child or children, and the descendants of any child or children of the said Eliza T. Fowle, and in such proportion as she may think proper. And in default of her making such limitation or

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appointment, then the said property, and all the increase thereof, at her death shall be held upon trust for the use and benefit of all the children of the said Eliza T. Fowle, and their descendants, per stirpes. And upon the further trust that the said Edward Snowden and Robert Beverly shall and may sell and dispose of the said property hereby conveyed, or any part thereof, from time to time, upon such terms, and for such price or prices, and invest the proceeds of such sale or sales, in such manner, in personal securities, stocks or real estate, and from time to time change such investments, and reinvest the proceeds in such manner as the said Eliza T. Fowle may, in writing, under her hand, designate or direct; and shall hold the proceeds of such sales, investments and reinvestments, for the uses and upon the trusts herein mentioned. And further, that the said trustees shall and will pay, transfer or deliver unto the said Eliza T. Fowle, or unto such person or persons, and at such time and times, and in such proportions, manner and form as the said Eliza T. Fowle may in writing direct, all the rents, issues and profits of the said property so conveyed as aforesaid. And the said parties of the second part covenant that they will well and truly execute and perform their duties as trustees.

Witness the following signatures and seals:

[SEAL.] WM. H. FOWLE.
[SEAL.] ROB'T BEVERLY.
[SEAL.] EDW'D SNOWDEN.

Witnesses:
J. C. NEVITT.
J. F. GREEN.

19 *Schedule marked A—referred to in the foregoing deed and made part thereof.*

Library.

Walnut book case and books, escritoire of rosewood, table, seven chairs, chandelier, and all other furniture and fixtures.

Conservatory.

Six chairs, carpet, side light, and all other furniture and fixtures.

Parlor.

Sofa, sixteen chairs, piano and stool, three mirrors, two mirror tables, eight vases of porcelain, china and alabaster, two chandeliers, carpet, two tables, etargere and contents, and all other furniture and fixtures.

Dining room.

Dining table and fixtures, mirror and table, marble-top side table, bronze clock and candlesticks, three Union and twelve mahogany

chairs, carpet and crumb cloths, chandalier, and all other furniture and fixtures.

Pantry.

Carpet, refrigerator, two dinner and tea services, knives and forks, housekeeping articles generally.

Lower hall.

Walnut table and hat stand, five walnut hall chairs, one marble-top table, umbrella stand, oil cloth, stair carpeting, and all other furniture and fixtures.

Kitchen.

Gas stove and kitchen furniture generally.

Chambers.

Nine mahogany, walnut and stained wood bedsteads and furniture, seven bureaus and dressing tables, six wardrobes, two secretaries, thirty-two chairs, six carpets, three tables, beds, bed linen, and all other furniture and fixtures.

Paintings, &c.

Eighteen oil paintings, twelve engravings.

20 *Silver ware.*

Coffee and tea pots, two sugar dishes, two cream pots, slop bowl, 3 dozen forks, 5½ dozen spoons, two waiters, 5 goblets, pitcher, 4 salt cellars and spoons.

Plated ware.

2 waiters, 2 pair castors, coffee and tea pot, tea kettle, and six pair candlesticks.

Together with all other furniture and articles used in housekeeping contained in or about said house.

WM. H. FOWLE.

COUNTY OF ALEXANDRIA, *to wit*:

I, J. Louis Kinzer, a notary public for the county aforesaid, in the State of Virginia, do certify that William H. Fowle, Edward Snowden, and Robert Beverly, whose names are signed to the writing hereto annexed, bearing date the 4th day of September, 1856, have acknowledged the same before me, in my county aforesaid.

Given under my hand this 12th day of September, 1856.

J. LOUIS KINYER,
Notary Public.

CLERK'S OFFICE OF ALEXANDRIA COUNTY COURT,
Sept. 24, 1856.

This deed was received in the office, and having been acknowledged before a notary public, admitted to record.

Teste: B. H. BERRY, *Clk.*

That the plaintiffs held the property under said deed up to the date of the tax sale hereinafter mentioned, and have never in any way conveyed the same to any one, but still hold the same as it was conveyed to them, except so far as their title has been affected by said tax sale. That Eliza T. Fowle, named in said deed, was, at the date of said deed, and has ever since continued, and now is, the wife of William H. Fowle, therein named, and that both said William H. and Eliza T. Fowle are still living. That on the day of January, 1864, the premises in controversy were sold for the non-payment of the direct tax imposed by the act of Congress of Aug. 5th, 1861, entitled "an act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes;" said sale having been made under the provisions of the act of Congress, approved June 7th, 1862, entitled "an act for the collection of
21 direct taxes in insurrectionary districts within the United States, and for other purposes," and the acts amendatory thereof; that L. E. Chittenden was the purchaser at said tax sale, and received the certificate of sale from the tax commissioners, in the words and figures following, to wit:

No. 53.—*Tax sale certificate, No. five.*

UNITED STATES OF AMERICA:

This is to certify that at a sale of lands for unpaid taxes, under and by virtue of an act entitled "an act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," held pursuant to notice, at Alexandria, in the county of Alexandria, in the State of Virginia, on the 11th day of January, A. D. 1864, the lot or parcel of land hereinafter described, situate in the city and county of Alexandria, and State aforesaid, and described as follows, to wit: a house and lot on Prince street, between Columbus and Alfred. The house is a three story brick, and numbered . The lot fronts on Prince street about 74 feet, and runs back 89 feet to an alley 11 feet in width. Which said property is said to have belonged to William H Fowle, and was entered on the land books of the State aforesaid, in his name, in the year eighteen hundred and sixty; was sold and struck off to L. E. Chittenden for the sum of five thousand and fifty dollars, he being the highest bidder, and that being the highest sum bidden for the same—the receipt of which said sum, in full, is hereby acknowledged and confessed.

Given under our hands, at Alexandria, this 11th day of January, A. D. 1864.

JOHN HAWXHURST,
GILLET F. WATSON,
W. J. BOREMAN,
Commissioners.

STATE OF VIRGINIA, ALEXANDRIA COUNTY COURT,
Clerk's Office, January 19, 1864.

The above certificate of sale was this day received in the office and admitted to record.

Teste: JEFFERSON TACEY, *Clerk.*

A copy.
Teste:

J. TACEY, *Clerk.*

22 That before the said tax sale, but after advertisement of sale, William J. Boothe, a friend of Mrs. Fowle, went to the office of the tax commissioners prepared to pay the tax, penalty, interest and costs upon the property, but made no tender of the money, being informed by the commissioners that they would not receive the money except from the owner in person; that the nature of the property was such as to admit of a partition, and the sale of an inconsiderable portion would have realized the full amount of the tax, interest, penalty and costs; that, in the month of May, 1865, the said Eliza T. Fowle appeared in person before the said tax commissioners and took the oath to support the Constitution of the United States, and tendered the amount of tax, penalty, interest, expenses of sale, and subsequent proceedings requisite to redeem said premises from sale, but declined to take the oath prescribed by the 7th section of the act of Congress approved March 3d, 1865, entitled An act further to amend an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes;" that said Wm. H. Fowle and Eliza T. Fowle left the city of Alexandria, Va., their place of residence in 1861, on the breaking out of the late rebellion, and went within the confederate lines, and there remained until the surrender of Gen'l Lee in 1865; that Robert Beverly, during the entire period of the rebellion, resided in Fauquier county, Virginia, and that Edward Snowden resided in the State of Maryland during said period; that the defendant holds the premises in controversy as tenant of said L. E. Chittenden, claiming under said tax certificate and not otherwise. And if, on the facts aforesaid, the law be for the plaintiffs, then we find the issue joined for the plaintiffs, and if, on said facts, the law be for the defendant, then we find the issue joined for the defendant.

J. S. EMMERSON, *Foreman.*

And now, at this day, to wit, at a special term of the Circuit Court held for said county of Alexandria, on the 25th day of February, 1867:

This day came the parties by their attorneys, and thereupon the matters of law arising upon the special verdict in this cause being argued, it seems to the court that the law is for the plaintiffs; therefore it is considered by the court that the plaintiffs do recover against the defendant the possession of the premises in the summons men-

tioned, and their costs by them about their suit in this behalf expended.

And on the motion of the said plaintiffs a writ of possession is awarded them, to the sheriff directed, to cause them to have their possession of the said premises.

23 And on the motion of the said defendant the execution of the judgment in this cause is stayed for sixty days.

A true copy from the record.

Teste: JEFF'N TACEY, *Clerk.*

And now at this day, to wit, the aforesaid 12th day of July, 1867, came the parties by their counsel, and the court having maturely considered the transcript of the record of the judgment afore-

24 said, and the argument of counsel, is of opinion that there is no error in the said judgment, therefore it is considered that the same be affirmed, and that the plaintiff pay to the defendants their costs by them about their defence in this behalf expended, and also one dollar damages; which is ordered to be certified to the said Circuit Court. But it is ordered to be entered of record that this case involves questions of such novelty or difficulty as to make it proper that the case should be finally determined in the Supreme Court of Appeals.

Def't's costs, $40 07.

From the record, a copy.

Teste: J. J. CHEW, *Clk.*

25 VIRGINIA:

At a Supreme Court of Appeals, held at the capitol, in the city of Richmond, on Monday, January 20th, 1868.

HENRY S. MARTIN, plaintiff,
against
EDWARD SNOWDEN AND ROBERT BEVERLY, defendants.

Upon a writ of supersedeas to a judgment rendered by the District Court for the fourth judicial district, held at the town of Fredericksburg, on the 12th day of July, 1867, affirming a judgment of the Circuit Court of Alexandria county, this day came the parties by their counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid, and the argu-

26 ments of counsel, is of opinion for reasons stated in writing and filed with the record, that there is no error in the said judgment; therefore it is considered that the same be affirmed, and that the defendants recover against the plaintiff thirty dollars damages, and also their costs by them about their defence in this behalf expended, which is ordered to be certified to the said District Court.

Defendants' costs in the Court of Appeals, $21 68.

In District Court, $40 07.

STATE OF VIRGINIA, *City of Richmond, to wit:*

I, M. T. Starke, clerk of the Supreme Court of Appeals of
27 Virginia, do hereby certify that the foregoing are true transcripts from the records of my office.

In testimony whereof I have hereunto set my hand (there being no seal of office) this 27th day of January, 1868.

M. T. STARKE, *C. C.*

VIRGINIA:

OFFICE OF SECRETARY OF THE COMMONWEALTH.

I, J. M. Herndon, secretary of the Commonwealth of Virginia, do certify that M. T. Starke, whose genuine signature is attached to the foregoing certificate, is the clerk of the Supreme Court of Appeals of Virginia, thereby appointed and qualified.

In testimony whereof I have hereto subscribed my name and affixed my official seal, this 29th day of January, A. D. 1868.

[SEAL.] J. M. HERNDON,
Sec'y of Com'th.

Endorsed: Martin *v.* Snowden. Copy record.
Fee, $9 00, paid. M. T. S.

28 Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States:

The petition of Henry S. Martin, respectfully represents, that a certain judgment was rendered against your petitioner at the suit of Robert Beverly and Edgar Snowden, at a Circuit Court for the county of Alexandria, in the State of Virginia, held on the 25th day of February, in the year 1867, in which suit your petitioner claimed and set up a right, title, privilege, and exemption under certain statutes of the United States, whereby was drawn in question the construction of the Contstitution and of certain clauses of said statutes of the United States, and in which suit the decision and judgment was against the right, title, privilege, and exemption so claimed as aforesaid, which said judgment was afterwards in all things affirmed by a final judgment of the Supreme Court of Appeals of the Commonwealth of Virginia, on the appeal of your petitioner in that behalf, to wit, on the 27th day of January,
29 1868, as appears of record.

That in said suit, which was an action brought by said Robert Beverly and Edgar Snowden to recover from your petitioner the possession of certain real estate in said county of Alexandria, which they claimed that your petitioner unlawfully withheld from them, your petitioner claimed and set up as his defense a right to such possession by virtue of a certificate of sale made by the tax commissioners of the United States, under the act of Congress of June 7, 1862, entitled "An act for the collection of direct taxes in insurrectionary districts within the United States and for other purposes," and the amendments thereto, to one L. E. Chittenden, from whom your petitioner at the time held a lease of the said premises. Your petitioner

at the time of entering his appearance in such Circuit Court filed a petition stating the facts, showing that he took and held possession of such premises by virtue of and under color of an authority de-
30 rived from an act of Congress, and verified by affidavit for the removal of said cause for trial at the then next Circuit Court of the United States, to be holden in the district where the suit was pending, and tendered surety as required by the act of Congress of March 3, 1863, entitled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," and amendments thereto.

The court denied the said petition, and adjudged that the filing thereof was not sufficient cause for the removal as prayed, which decision and judgment were contrary to the provisions of said act of Congress.

The court also held and adjudged that such certificate of sale was not such evidence of title as the said act prescribes, and that your petitioner had no right to the possession of said premises by virtue of said certificate of sale, which said judgment was contrary to the provisions of the acts of Congress aforesaid.

Wherefore your petitioner prays your honor to allow a writ of error to the said Supreme Court of Appeals of the State of
31 Virginia, being the highest court of law of the said State in which a decision of the said suit could be had, and in which final judgment was entered, as appears of record, for the correction of the errors aforesaid, and the reversal of the judgment aforesaid, according to the form of the statute in such case made and provided.

HENRY S. MARTIN,
By W. WILLOUGHBY, *Att'y.*

The writ of error is allowed as prayed to issue, with citations, on filing bond with approved security in the penalty of three thousand dollars, ($3,000.)

S. P. CHASE,
Chief Justice U. States.

A copy of this petition was filed in my office on the 5th day of Feb., 1868.

M. T. STARKE,
Clerk of the Supreme Court of Appeals of Va.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Supreme Court of Appeals of the Commonwealth of Virginia, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Appeals of the Commonwealth of Virginia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry S. Martin, appellant, and Robert Beverley and Edgar Snowden, appellees, wherein was drawn in question the validity of a treaty or statute of, or an

authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such
33 their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or a statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Henry S. Martin, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected in said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued 30th January, 1868.

[SEAL.] D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

S. P. CHASE, *Chief Justice U. States.*

I certify that a copy of this writ was filed in my office the 5th of Feb., 1868.

M. T. STARKE,
Clerk of the Supreme Court of Appeals of Va.

34 The United States of America to Robert Beverley and Edgar Snowden, greeting:

You are hereby cited and summoned to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Appeals of the Commonwealth of Virginia, wherein Henry C. Martin is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against said plaintiff in error as in the sida writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States, this thirtieth day of January in the year of our Lord one thousand eight hundred and sixty-eight.

S. P. CHASE,
Chief Justice U. States.

A copy of this citation was filed in my office the 5th of February, 1868.

M. T. STARKE,
Clerk of the Supreme Court of Appeals of Va.

Service of the within citation acknowledged this 3d day of February, 1868.

S. FERGUSON BEACH,
Att'y for Beverley and Snowden.

35 Know all men by these presents, that we, John C. Clark and Henry D. Cooke, are held and firmly bound unto Robert Beverley and Edgar Snowden, in the full and just sum of three thousand dollars, to be paid to the said Robert Beverley and Edgar Snowden, certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal, and dated this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas lately at a Supreme Court of Appeals of the commonwealth of Virginia, in a suit pending in said court between Henry S. Martin, appellant, and Robert Beverley and Edgar Snowden, appellees, judgment was rendered against the said Henry S. Martin; and the said Henry S. Martin having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert Beverley and Edgar Snowden, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Henry S. Martin shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

[L. S.] H. D. COOKE.
[L. S.] JOHN C. CLARKE.

Sealed and delivered in presence of—
JOS. T. BROWN.

Approved by—

S. P. CHASE, *Chief Justice.*

The original bond (from which this is a copy) was filed in my office on the fifth day of February, 1868.

M. T. STARKE,
Clerk of the Supreme Court of Appeals of Va.